

# **CONCISE EXPLANATORY STATEMENT**

June 26, 2003 Public Hearing

Adoption: October 1, 2003

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The Department of Labor and Industries has adopted newly rewritten and clarified requirements relating to Respirators in non-agricultural industries. This rulemaking is part of our four-year plan to rewrite for clarity all of our general occupational safety and health rules. This project provides additional flexibility for employers in some situations.

No increase in requirements were proposed, although one requirement was reduced. A mandatory fit test procedure will give two options when performing the procedure. The portions of the current rule regulating engineering controls and employee exposure assessment are being moved into a new chapter, Respiratory Hazards. The rest of the rule has been rewritten for clarity and ease of use.

The department received public comment on the following sections and modified the proposed amendments to these sections as indicated below. All other sections proposed for amendment did not receive comment and are adopted as proposed.

## **NEW SECTIONS:**

### **WAC 296-842-100, Scope.**

#### **Comment received relating to this section:**

- Stakeholder says there is no clear distinction between “required” and “voluntary” respiratory use when no hazard exists but the employer requires respirator use anyway.

#### **Department response:**

- Table 1, after the words “required to use a respirator” added “by WISHA or the employer.”

### **WAC 296-842-11005, Make sure voluntary use of respirators is safe.**

#### **Comment received relating to this section:**

- Stakeholder says there is no clear distinction between “required” and “voluntary” respiratory use when no hazard exists but the employer requires respirator use anyway

#### **Department response:**

- Added an “Important” note clarifying the difference between required and voluntary use.

**Comment received relating to this section:**

- “Under the discussion of voluntary respirator use the note states that poor respirator maintenance can cause an unsafe air supply. This is misleading. Unsafe air supplies are normally not associated with the respirator itself, but due to some external cause such as incompatible breathing gas, overheating compressor, etc.”

**Department response:**

- Removed confusing wording about maintenance
- Clarified the note containing examples of health hazards

**WAC 296-842-12010, Keep respirator program records.**

**Comment received relating to this section:**

- “The discussion of retention of medical records talks about retaining “other records from medical evaluations.” I think this wording is confusing. The employer should not have any records in their possession other than PHLCP recommendations.”

**Department response:**

- Removed the phrasing in the reference that listed this example
- Added a sub-bullet to include “written recommendations from the LHCP”

**WAC 296-842-14005, Provide medical evaluations.**

**Comment received relating to this section:**

- “Please retain the language from 296-62-07153 (1) last sentence, which allows the PLHCP to add additional questions to Part B of the questionnaire.”

**Department response:**

- Added an “Important” note clarifying that a previous medical evaluation addressing respirator use was sufficient to meet this requirement.
- Added a note to Step 3, clarifying the LHCP’s discretion to add questions to the medical questionnaire.
- Add a note under the sub-bullet addressing employee confidentiality to stress the importance of maintaining confidentiality

**WAC 296-842-22005, Use this medical questionnaire for medical evaluations.**

**Comment received relating to this section:**

- “Please retain the language from 296-62-07153 (1) last sentence, which allows the PLHCP to add additional questions to Part B of the questionnaire.”

**Department response:**

- Added a note clarifying the LHCP’s discretion to add questions to the medical questionnaire.

## **WAC 296-842-22010, Follow these fit-testing procedures for tight-fitting respirators.**

### **Comment received relating to this section:**

- “It is appropriate and laudable for the Department of Labor and Industries to update fit test exercise protocols for CNP-based fit testing methods to take advantage of advances in technology and application. The above-referenced paragraph of the proposed rule in the WAC comes close to completely accomplishing that goal. With the same motivation, the U.S. Dept. of Labor--Occupational Safety and Health Administration (OSHA) also is proposing to update fit test exercises, and copies of OSHA's proposed rule making are attached. (The three attachments are identical textually--attached in three different formats for convenience). OSHA's proposed rules are almost identical to those of L&I, but do have some essential differences.

It is my opinion that the OSHA proposed rules will protect the health and safety of Washington workers better than the proposed L&I rules because the OSHA rules were refined and perfected after hours of testimony from the parties that designed and tested the fit testing protocols. Furthermore, the proposed OSHA rules will be advantageous to Washington employers, because they will allow employers to spend less time on fit testing, and allow them to spend more time in economically productive tasks.

My company provides fit testing services to Washington employers, and after many thousand fit tests, our experience is that the proposed OSHA protocol is unsurpassed at assessing leaking respirator face pieces. Furthermore, employers for whom we fit tested were pleased that we were able to fit test as many as a dozen individuals in an hour. Previous experience had led employers to expect more like three or four fit tests to be accomplished in an hour, and naturally they were pleased with the improvement.

Thank you for considering these comments. Please do not hesitate to call or write with any questions or comments.”

### **Department response:**

- Revised Table 19 so that the Controlled Negative Pressure procedures are consistent with OSHA's proposed language and in one place at the end of the table

### **Comment received relating to this section:**

- “It would be very helpful if you would clarify by way of a note on the Saccharin and Bitrix fit test protocols to indicate in (step 2, step 5) *or use prepared solutions provided by the manufacturer.*  
Justification: this procedure requires laboratory equipment and time this not generally available to those doing a fit test. Commercial products made for the two tests are common, inexpensive and much easier to handle that the setup needed to make your own solution. “

### **Department response:**

- Added a note in Table 13 to allow the option of using commercially prepared solutions
- Added a note in Table 14 to allow the option of using commercially prepared solutions